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BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

In the Matter of )

PETITION FOR RULEMAKING TO ADAPT )  
THE SECTION 214 PROCESS TO THE )  
CONSTRUCTION OF VIDEO DIALTONE )  
FACILITIES )

PETITION FOR RELIEF FROM UNJUST AND )  
UNREASONABLE DISCRIMINATION IN THE )  
DEPLOYMENT OF VIDEO DIALTONE FACILITIES )

RM-8491

To: The Commission

COMMENTS OF  
SOUTHWESTERN BELL TELEPHONE COMPANY

Southwestern Bell Telephone Company (SWBT), by its attorneys, and pursuant to the Commission's June 13, 1994 Public Notice,<sup>1</sup> respectfully submits these Comments regarding a Petition for Rulemaking and Petition for Relief filed on May 23, 1994 by the Center for Media Education, Consumer Federation of America, the Office of Communication of the United Church of Christ, the National Association for the Advancement of Colored People and the National Council of La Raza (collectively, "Petitioners").

Petitioners request, inter alia, that the Section 214<sup>2</sup> application process be expanded to include an anti-redlining provision which would require applicants to include demographic data in their applications and to assure that "providers . . . make service . . . available to a proportionate number of lower income and minority customers."<sup>3</sup> Petitioners also ask the Commission to

<sup>1</sup> DA 94-621.

<sup>2</sup> 47 U.S.C. § 214.

<sup>3</sup> Petition for Rulemaking, p. 3.

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issue a policy statement announcing its commitment to universal video dialtone service and an interpretive rule clarifying that video dialtone applicants "must adhere to the objectives of universal service."<sup>4</sup>

SWBT opposes the Petitioners' requests for a rulemaking to consider amending the Section 214 application process because such changes are neither necessary nor appropriate. Also, SWBT objects to Petitioners' requests to the extent they would require an examination of broad universal service policy in the context of an individual proposed service. First, video dialtone does not present any universal service issues beyond those already considered by the Commission in its adoption of the Video Dialtone Order.<sup>5</sup> Second, if any universal service issues were presented by video dialtone service, they should be addressed in a comprehensive proceeding designed to examine all aspects of universal service. SWBT has advocated such an orderly, comprehensive approach to universal service issues in the past.<sup>6</sup> An examination of any such universal service issues -- if they exist within the video dialtone framework -- should not delay the processing of video dialtone

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<sup>4</sup> Petition for Relief, pp. 14-16.

<sup>5</sup> Telephone Company-Cable Television Cross-Ownership Rules, Section 63.54-63.58, CC Docket No. 87-266, 7 FCC Rcd 5781 (1992) (Video Dialtone Order).

<sup>6</sup> Comments of Southwestern Bell Telephone Company, filed in Inquiry into Policies and Programs to Assure Universal Telephone Service in a Competitive Market Environment, RM-8388 (Dec. 16, 1993).

Section 214 applications and deployment of pro-competitive video dialtone service.

I. THE SECTION 214 APPLICATION PROCESS SHOULD NOT BE EXPANDED.

The Commission has used the Section 214 application process for several decades to evaluate proposed new interstate lines. The Section 214 process falls short of being the ideal method of expediting the delivery of new telecommunications services to the public, but it should not be faulted for requiring too little information from applicants or too few steps before approval. Consideration of the demographics of the geographic area to be served by new lines has never been part of the Section 214 public interest determination, except to the extent that the number of potential customers in an area is indicative of the degree of demand for service. Historically, the focus of Section 214 has been on the demand for a service, competitive impact and economic justification for the new construction.<sup>7</sup> It is not appropriate to augment a long-standing Section 214 application process to include an additional hurdle, which would only slow down further the processing of applications and delay the delivery of new, pro-competitive services. Petitioners have failed to justify a need to

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<sup>7</sup> E.g., MTS-WATS Market Structure Inquiry, Second Report and Order, 92 F.C.C. 2d 787 (1982); General Tel. Co. of Calif., 13 F.C.C. 2d 448, 456 (1968) ("Congress intended . . . to insure that such construction would not be inconsistent with the public interest; e.g., not wasteful or unnecessary). Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services, GN Docket No. 93-252, Second Report and Order, ¶ 182 (released Mar. 7, 1994) ("to protect ratepayers . . . from paying for unnecessary or unwise facilities").

change this process for video dialtone as compared to other innovative services proposed through Section 214 applications in the past.

It is also inappropriate to consider universal availability of a new service as a component of the Section 214 approval process. A carrier files a Section 214 application once it has determined that the construction of new lines is justified by business considerations such as cost and demand in the proposed service area. The Commission would exceed by far the purpose of a Section 214 application if it were to consider the availability of the proposed service (along with the other more complex universal service issues) in areas other than those proposed in the application.

Even if demographics and universal service were proper subjects for Section 214 review, it is unnecessary to make these changes if, as Petitioners indicate, the prohibition of Section 202(a)<sup>8</sup> against unjust or unreasonable discrimination would be available as a potential remedy against redlining in the deployment of communications services.

II. VIDEO DIALTONE DOES NOT PRESENT ANY UNIVERSAL SERVICE ISSUES, BUT IF IT DID, THEY SHOULD BE EXAMINED IN A COMPREHENSIVE UNIVERSAL SERVICE PROCEEDING.

As a service that is potentially competitive with a cable television service which is already available to over 95% of

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<sup>8</sup> 47 U.S.C. § 202(a).

American households,<sup>9</sup> video dialtone does not present any universal service issues beyond those which the Commission has already considered in developing its video dialtone framework.

As the Commission stated in the Video Dialtone Order, "encouraging universal service is an implicit goal of video dialtone . . . . Thus, it is unnecessary to state independently such an objective here . . . . [T]he Commission should seek to make available, in response to market demand, nationwide, publicly accessible, advanced telecommunications networks able to provide adequate facilities at reasonable charges."<sup>10</sup>

Although SWBT does not agree with all of the requirements of the video dialtone framework,<sup>11</sup> SWBT believes that the Commission designed that framework to allow competitive market forces to bring video dialtone service to markets in which there is sufficient demand to justify an attempt to compete with existing video programming services. Given that the cable television industry already reaches most American households, there is not any universal service issue to be addressed with respect to video dialtone.

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<sup>9</sup> Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation Buy-Through Prohibition, MM Docket Nos. 92-266 and 92-262, Third Order on Reconsideration, para. 2 (released Mar. 30, 1994).

<sup>10</sup> Video Dialtone Order, 7 FCC Rcd at 5806 para. 47.

<sup>11</sup> Petition for Reconsideration of Southwestern Bell Corporation filed in Telephone Company Cable Television Cross-Ownership Rules, Section 63.54-63.58, CC Docket No. 87-266 (Oct. 9, 1992) (SBC Petition for Reconsideration).

As the Video Dialtone Order implies, competitive market forces will bring video programming services to all locations where there is sufficient demand for them. Universal service does not apply where there are a number of virtually equivalent substitute services already available universally.

SWBT acknowledges its obligation to offer new services without engaging in unjust or unreasonable discrimination in violation of Section 202(a) of the Communications Act. However, SWBT does not believe that the Communications Act requires or the Commission intended for video dialtone to be deployed throughout a local exchange carrier's territory regardless of demand, cost and benefits of doing so.

If Petitioners were not satisfied with the Commission's handling of universal service in the Video Dialtone Order, they should have sought reconsideration on that basis. The Commission clearly addressed universal service in the text of the Video Dialtone Order.

If video dialtone did present any additional universal service issues, they should be considered in an orderly, comprehensive proceeding which would permit exhaustive attention to common issues from all interested parties.<sup>12</sup> To do otherwise would inject a broad telecommunications policy issue into narrow Section 214 application proceedings involving implementation of a single

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<sup>12</sup> The nature of the comprehensive universal service proceeding is described in more detail in SWBT's Comments referenced in Fn. 6, supra.

service.<sup>13</sup> Also, a piecemeal approach to universal service would likely result in inconsistent regulation of similar services.

As explained previously, SWBT does not believe the video dialtone framework provides the proper incentives for telephone companies to participate in expediting the delivery of competitive video programming, especially given the requirement to build sufficient capacity to serve multiple video programmers, regardless of programmer-customer demand for the excess capacity.<sup>14</sup> Petitioners' requested changes would require similarly unjustified expenditures, as they apparently seek universal video dialtone service throughout a geographic area (e.g., a state or region) regardless of end-user demand for alternative sources of video programming or cost. Such a universal service obligation would make video dialtone an even less viable venture, which would be less likely to become a "pillar . . . [of] our national information infrastructure."<sup>15</sup>

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<sup>13</sup> The broad policy implications involved in a consideration of universal service issues is evidenced by the fact that various pending federal legislative proposals on telecommunications address the subject. E.g., H.R. 3636, 103d Cong., 1st Sess. (1993); S. 1822, 103d Cong., 2d Sess. (1994).

<sup>14</sup> SBC Petition for Reconsideration, pp. 8-10; SBC Ex Parte Presentations in CC Docket No. 87-266 (May 20 and June 1, 1994).

<sup>15</sup> Petition for Relief, p. 17.

III. CONCLUSION

For the reasons set forth above, SWBT urges the Commission not to initiate the rulemaking requested by Petitioners and to deny the additional relief requested by Petitioners. In any event, SWBT respectfully suggests that the concerns raised by Petitioners should not delay the processing of Section 214 applications for video dialtone service.

Respectfully submitted,

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July 12, 1994



CERTIFICATE OF SERVICE

I, Liz Jensen, hereby certify that the foregoing  
Comments of Southwestern Bell Telephone Company in Docket DA  
94-621, have been served this 12th day of July, 1994 to the  
Parties of Record.

Liz Jensen  
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July 12, 1994

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